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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re

SONIA ELIZABETH TOBAR,
Debtor.

ADV Case No.: 2:22-ap-01138-SK

Case No.: 2:22-bk-11864-SK

Chapter 13

TERESA VASQUEZ, FERNANDO
PANAMENO, REYNA PANAMENO, LIDIA
MAGANA

Plaintiffs,

v.

SONIA ELIZABETH TOBAR

Defendant.

**NOTICE OF MOTION AND
MOTION TO DISMISS COMPLAINT
PURSUANT TO FED.R.CIV.P. 12(B)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

[Fed.R.Civ.P. 12(b)(6)]

Date: August 24, 2022
Time: 9:00 a.m.
Ctrm: 1575

TO PLAINTIFF AND TO ITS COUNSEL OF RECORD HEREIN:

Please take notice that on August 24, 2022 at 9:00 a.m. in the Courtroom of the Honorable Sandra R. Klein, located at 255 E. Temple Street, Los Angeles, CA 90012, Courtroom 1575, Defendant Sonia Elizabeth Tobar will move this Court for an order dismissing the Plaintiffs' Complaint pursuant to Fed.R.Civ.P. 12(b)(6), with prejudice and without leave to amend.

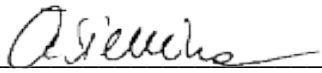
1 The Motion will be made on the grounds that the Complaint fails to state claims on which
2 relief may be granted against Defendants because:

3 (i) The First Claim fails to state a claim upon which relief may be granted.
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5 This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum
6 of Points and Authorities, all records and files herein, and in the event the Court requests a hearing,
7 upon such documentary evidence and oral argument of Counsel as may be presented at the time of
8 hearing in this matter.
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10 DATED: July 19, 2022

Tenina Law, Inc.

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14 Alla Tenina
15 Attorney for Defendant
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

Defendant, Sonia Elizabeth Tobar ("Defendant") moves this court for an order dismissing the above listed claim against her.

II.

**A MOTION TO DISMISS IS PROPERLY GRANTED WHERE A
CLAIM ALLEGES NO FACTS THAT WOULD ENTITLE PLAINTIFFS
TO RELIEF**

A Fed. R. Civ. P. 12(b)(6) motion to dismiss tests the legal sufficiency of the claims asserted in the complaint. A Rule 12(b)(6) dismissal is proper where there is neither a “lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable legal theory.” Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc., 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting Balistereri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1998)). Plaintiffs were obligated to provide the ‘grounds’ for their ‘entitlement to relief’ beyond labels and conclusions, and a formulaic recitation of the elements of a cause of action. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Indeed, “factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* Further, Courts are not bound to accept as true a legal conclusion concluded as a factual allegation. *Id.* As set forth herein, Plaintiff’s claims against Defendant each fail to state facts which would entitle Plaintiff to relief. Accordingly, each of Plaintiff’s claims below should be properly dismissed.

Furthermore, a Summary Judgment should be granted when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Federal Rule of Civil Procedure (FRCivP); see also Federal Rules of Bankruptcy Procedure (FRBP) 7056-1. A fact is

1 material if it might affect the outcome of a proceeding under the governing substantive law. Anderson
2 v. Liberty Lobby, Inc., 477 U.S. 242, 248 (U.S. 1986). Once the motion has been supported by prima
3 facie showing of entitlement to judgment as a matter of law, the party opposing the motion must go
4 beyond the pleadings and demonstrate that a material issue of fact exists to make summary judgment
5 inappropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 324, (U.S. 1986); Martin v. Commercial Union
6 Ins. Co., 935 F.2d. 235, 238 (11th Cir. 1991).

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8 As discussed herein below, the Plaintiff Complaint fails to state any facts upon which relief
9 may be given to this Plaintiff and any material issue of fact which might preclude the grant of
10 Summary Judgment in this matter.

11 **III.**

12 **THE SECOND CLAIM UNDER 11 U.S.C. §523(A)(6) (WILFUL AND MALICIOUS INJURY)**

13 **FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED**

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15 Section 523(a)(6) excepts from discharge any debt of the debtor “for willful or malicious
16 injury to another entity or to the property of another entity.” 11 U.S.C. § 523(a)(6). Under
17 §523(a)(6), Defendant’s actions would need to equate with “willful and malicious” injury within the
18 meaning of the Code. The first step of this inquiry is whether there is “willful” injury, which is must
19 entail a deliberate or intentional injury. Kawaauhau v. Geiger, 523 U.S. 57, 61-62 (1998). In the
20 Ninth Circuit, the intent required to be considered “willful” is either the subjective intent of the actor
21 to cause harm or the subjective knowledge of the actor that harm is substantially certain to occur.
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23 Carrillo v. Su (In re Su), 290 F.3d 1140, 1144-45 (9th Cir. 2002).

24
25 The second step of the inquiry is whether Debtors’ conduct was “malicious.” The relevant test
26 for such “malicious” conduct is: 1) a wrongful act; 2) done intentionally; 3) which necessarily causes
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injury; and 4) without just cause and excuse. Jett v. Sicroff (In re Sicroff), 401 F.3d 1101, 1105-1106 (9th Cir. 2005).

A. THE WILLFUL ASPECT OF 523(a)(6) AS INTERPRETED BY CASE LAW:

(1) The Geiger case requires "deliberate and intentional injury":

In the case Margaret Kwaauhau v. Geiger, 523 U.S. 57 (1998), the Supreme Court established that a "deliberate or intentional injury" (not simply a deliberate and intentional act) is required for Section 523(a)(6) to render a debt nondischargeable. The Court states:

The word "willful" in (a)(6) modifies the word "injury," indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. Had Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead "willful acts that cause injury." ...The (a)(6) formulation triggers in the lawyer's mind the category "intentional torts," as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend "the consequences of an act," not simply "the act itself. Id., 523 U.S. 61 - 62 (citations omitted), 118 S. Ct. 974, 977.

(2) Ninth Circuit Carillo case requires subjective intent: The Ninth Circuit Court of Appeals in the case Carillo v. Su (In re Su), 290 F. 3d 1140 (9th Cir. 2002), applying Geiger, decided that the state of mind of the debtor that is required to satisfy Section 523(a)(6)'s willful injury requirement is a subjective one. According to the Restatement (Second) of Torts § 8A (1964), the Ninth Circuit states, "an action is intentional if an actor subjectively 'desires to cause consequences of his act, or ...believes that the consequences are substantially certain to result from it.'" Id at 1143 - 1144. The Ninth Circuit continues:

While the Geiger Court did not focus on this section of the Restatement (dealing with situations in which an actor is "substantially certain" that harm will result from his acts), the Eighth

1 Circuit opinion that the Court affirmed addressed this Restatement provision in some detail, equating
2 § 523(a)(6) with intentional torts and defining such torts as actions where an actor subjectively desires
3 to cause an injury or believes that an injury is substantially certain to result from his or her acts.

4 Geiger v Kawaauhau (In re Geiger), 113 F.3d 848, 852 (8th Cir. 1997) (en banc), aff'd, 523 U.S. 57
5 (1998). Id., at page 1143.

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7 (3) Ninth Circuit recognizes split in Circuits: The Ninth Circuit Court of Appeals in Carillo recognizes
8 a split in the Circuits as to what state of mind is required to satisfy Section 523(a)(6)'s willful injury
9 requirement. However, the Sixth Circuit's interpretation of §523(a)(6) in the case of Markowitz v.
10 Campbell (In re Markowitz), 190 F.3d 455 (6th Cir. 1999) exemplifies the strict subjective approach
11 which the Ninth Circuit adopted in Carillo, namely, a debt is nondischargeable under § 523(a)(6) only
12 if the debtor intended to cause harm or knew that harm was a substantially certain consequence of his
13 or her behavior. See Carillo, supra, at page 1143.

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15 B. THE "MALICIOUS" ASPECT OF SECTION 523(A)(6) AS INTERPRETED BY
16 CASE LAW:

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18 The Ninth Circuit Court of Appeals treats the "malicious" injury requirement of Section
19 523(a)(6) separate from the "willful" requirement. The Court in Carillo, supra, states:

20 The BAP correctly observed that in In re Jerich, we treated the "malicious" injury requirement
21 of § 523(a)(6) as separate from the "willful" requirement. According to In re Jercich: "A 'malicious'
22 injury involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4)
23 is done without just cause or excuse.'" 238 F.3d at 1209 (quoting In re Bammer, 131 F.3d at 791); see
24 also id. at 1209 n. 36 (emphasizing that the "maliciousness standard - and in particular our 'just cause
25 and excuse' prong - survived Geiger" and distinguishing In re Miller, where "the 'just cause or excuse'
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1 standard has been displaced by Geiger and ...[where] the 'willful' and 'malicious' prongs [have been
2 collapsed] into a single inquiry").

3 While Carrillo contends that the four factors can be ascertained by examining the record, the
4 trial judge in our case did not make such findings in his Statement of Decision.

5 C. STATEMENT OF DECISION IN STATE COURT ACTION

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7 The complaint in the state court revolves around violations of the Rent Stabilization Ordinance
8 (RSO). RSO is a draconian set of ordinances, complicated and convoluted, designed for a specific
9 purpose of punishing landlords for every minor violation when it comes to eviction. And the LA City
10 Council keeps adding new regulations to RSO year after year. In fact, every new regulation
11 encourages the property owners to convert the units to owner occupancy. There are so many RSO
12 regulations that it takes a lot more skill to manage the units because of the constant addition of new
13 regulations. These regulations are encouraging the property owners to take their units off the market.
14 A lot of times the owners make mistakes in RSO procedures, which cost them dearly in a long run.

15
16 The state court judge recited the facts of the case stating that the law was not followed and it
17 was at least the ignorance of the law which caused infliction of emotional distress on the plaintiffs.

18
19 As for knowledge of the law, the maxim “ignorance of the law is no excuse” is a familiar
20 concept and “[n]o doctrine is more universal or of more ancient vintage in the law than that ignorance
21 of the law excuses no one.” Cheek v. U.S., 498 U.S. 192, 199 (1991). It is commonly applied in a
22 criminal context but rarely in one that is civil. Frank P. Randazzo v. Harris Bank Palatine, N.A., 262
23 F.3d 663, 667 (7th Cir. 2001) (stating that “[a]lthough the principle that ‘ignorance of the law is no
24 excuse’ has been unquestioned in Anglo-American criminal jurisprudence, the development of an
25 analogous principle in civil matters always has been subject to more limitations because of the
26 development of equitable principles in chancery practice.”) The basic proposition is that knowledge of
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1 the law defining an offense is often not itself an element of the offense. The state court judge does not
2 address the specific requirements of 523(a)(6), which make this adversary complaint and its one cause
3 of action just a conclusory statement with no nexus to the elements of §523(a)(6).

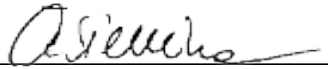
4 **IV.**

5 **CONCLUSION**

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7 Plaintiffs' allegations, no matter how they word it will run into Carillo and Geiger. Thus, as
8 she will never be able to prove "wilful or malicious injury" under these circumstances, the complaint
9 should be dismissed without leave to amend.

10 Dated: July 19, 2022

Respectfully submitted,

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Alla Tenina

13 Attorney for Defendant
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
15250 Ventura Blvd., Suite 601
Sherman Oaks, CA 91403

A true and correct copy of the foregoing document entitled (*specify*): NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO FED.R.CIV.P. 12(B)(6); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 07/19/2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Kathy A. Dockery, (TR), efiling@CH13LA.com
US Trustee (LA) ustpreion16.wh.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 07/19/2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Sandra R. Klein
255 E. Temple Street Ste 1582
Los Angeles, CA 90012

Gina Lisitsa, Esq.
LISITSA LAW, INC.
9100 Wilshire Boulevard, Suite 725E
Beverly Hills, CA 90212

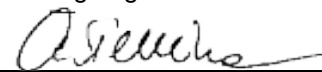
☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

07/19/2022 Alla Tenina
Date Printed Name


Signature